

BECKMAN CONSTRUCTION CO.**CONTRACT NO.V101C-0048****VABCA-3920****VA MEDICAL CENTER
Chicago (West Side), Illinois**

James F. Beckman, President, Beckman Construction Company, Fort Worth, Texas, for the Appellant.

Charlma Jones, Esq., Trial Attorney, and *Phillipa L. Anderson, Esq.*, Assistant General Counsel, Washington, D.C., for the Department of Veterans Affairs.

OPINION BY ADMINISTRATIVE JUDGE McMICHAEL

Appellant, Beckman Construction Co. (Beckman or Contractor), appeals a Contracting Officer's final decision asserting credits in connection with a "fire safety/patient privacy" contract at the Department of Veterans Affairs (VA or Government) West Side Medical Center in Chicago, Illinois. The contract required installation of a fire sprinkler system, a new fire alarm system, and conversion of certain bed wards into semi-private bedrooms. As part of this project, substantial asbestos abatement was also required. The dispute before the Board centers on what the base contract required the Contractor to include in its bid for abating plaster ceilings found to be contaminated with asbestos. Appellant argues that it reasonably read the contract to require abatement only of those plaster ceilings which were being totally demolished and not of others which were to remain and be penetrated by small openings. Only entitlement is at issue.

The record consists of the Appeal File (R4, tabs 1-15), the transcript of a hearing held in Washington, D.C., together with exhibits submitted by the Appellant (Exhs. A-1 to A-12; C-1) and the Government (Exhs. G-1 to G-8). Both parties have filed posthearing briefs. The Board has also referred to certain basic contract documents found in VABCA-4548, a companion case involving the same contract. (4548 R4, tabs 1-8).

FINDINGS OF FACT

On July 2, 1991, the VA issued Solicitation No. 8475-AE entitled "Fire Safety/Patient Privacy" for work to be performed at the Westside VA Medical Center in Chicago, Illinois. (R4, tab 2) The principal purpose of the contract was to install sprinkler and fire alarm systems in a building, which consisted of nine floors, a penthouse and a mechanical room. This work, which was to be included in Bid Item I, "GENERAL CONSTRUCTION," was described as "general construction, alterations, mechanical and electrical work, utility systems, necessary removal of existing construction and certain other items." Bid Item II, "ASBESTOS ABATEMENT" was described as "[r]emoval and disposal of all asbestos contaminated material pertaining to work in Item I." (Exh. G-1) In addition to the base items, the solicitation also contained options for additional work in five areas, together with related asbestos abatement in three of those areas. Bidders were informed that the Government would evaluate offers by "adding the total price for all options to the total price for the basic requirement (Item I plus Item II)."

The asbestos abatement work in Bid Item II, relating to installation of the new fire sprinkler system, included abating existing fittings, elbows and straight pipe contaminated with asbestos, and cleaning the ceilings. The locations of the various fittings, elbows and pipe to be abated, numbering in excess of 2,500, were indicated in a series of ASBESTOS REMOVAL & REINSULATION drawings labeled 1A-ASB1 to 1A-ASB19. (Tr. 26) The areas depicted in the drawings were also marked with various encircled symbols (A through D) which were defined in Drawing 1A-ASB1, "COVER SHEET, ASBESTOS REMOVAL & REINSULATION GENERAL NOTES ETC.," as follows:

A REMOVE ALL ASBESTOS-CONTAINING-MATERIALS (ACM) AS SHOWN ON DRAWING UNDER MAJOR/FULL ABATEMENT CONDITIONS.

B1 REMOVE ALL ACM PIPE FITTINGS AS SHOWN ON DRAWING UNDER MAJOR/FULL ABATEMENT CONDITIONS (MORE THAN 3 ROOMS).

B2 REMOVE ALL ASBESTOS CONTAINING PIPE FITTINGS AS SHOWN ON DRAWING UNDER MINOR/MODIFIED ABATEMENT CONDITIONS (3 ROOMS OR LESS).

NOTES B1 AND B2 SHALL APPLY TO ABATEMENT AREAS WITHIN THE BUILDING CORRIDORS. THE ABATEMENT PROCEDURES WILL VARY IN ACCORDANCE WITH AREA ACCESSIBILITY.

C CONTAIN ENTIRE AREA WITH PRIMARY SEALS, HEPA VACUUM AND WET PIPE ENTIRE AREA, APPLY ENCAPSULANT TO SURFACES AND CONDUCT AREA AIR SAMPLING.

D REMOVE OVERHEAD DUCT INSULATION UNDER MAJOR ABATEMENT CONDITIONS.

Immediately following these notes on Drawing 1A-ASB1 was an admonition which included the following:

THE IDENTIFIED ASBESTOS MATERIAL DOES NOT RELIEVE THE CONTRACTOR OF CONTRACT RESPONSIBILITIES/REQUIREMENT TO REMOVE ALL ASBESTOS CONTAINING MATERIALS FROM CONSTRUCTION SCOPE AREAS.

Following this note were further instructions with respect to plaster ceilings:

AREAS WHERE ASBESTOS DEBRIS IS ENCOUNTERED DURING DEMOLITION OF PLASTER CEILING

1 - THE CONTRACTOR TEAM SHALL IMMEDIATELY

SATURATE THE DEBRIS, MIST THE AMBIENT AIR WITH AMENDED WATER AND HEPA VACUUM THE OUTER LAYER OF THE TYVEK SUIT. THE GENERAL CONTRACTOR TEAM WILL PROCEED TO THE EXIT OF THE WORK AREA AND SHED THE OUTER LAYER OF THE DISPOSABLE TYVEK SUIT LEAVING IT WITHIN THE WORK AREA. IMMEDIATELY AFTER EXITING THE WORK AREA, THE GENERAL CONTRACTOR TEAM SHALL PROCEED TO THE EMERGENCY SHOWER FOR DECONTAMINATION THEN NOTIFY THE ON-SITE PROJECT MANAGER.

**2 - NO FURTHER TASKS SHALL BE PERFORMED ~~UNTIL~~
~~VERBAL RECOMMENDATIONS ARE MADE BY THE ON-SITE PROJECT MANAGER~~ BY THE CONTRACTOR. THE CONTINUING DEMOLITION/REMOVAL WORK AND ASBESTOS REMOVAL WORK SHALL CONTINUE PER REQUIREMENTS OF SPECIFICATION SECTION 01569, ASBESTOS ABATEMENT AND AS RECOMMENDED BY THE ON-SITE V.P.I.H. 20% OF ROOMS WITH PLASTER CEILINGS SHALL BE INCLUDED AS PART OF THIS WORK PROCEDURE IN THE CONTRACTORS BASE BID. UNIT PRICES WILL BE UTILIZED FOR ROOM COUNT OVER OR UNDER THE 20% PROJECT WORK AMOUNT.**

AREAS WHERE PLASTER CEILING EXIST

1 - THE CONTRACTOR TEAM SHALL PLACE TWO (2) LAYERS OF 4 MIL POLY DIRECTLY BELOW THE AREA OF PENETRATION. WORKERS SHALL DON AS A MINIMUM 1/2 FACE RESPIRATORS EQUIPPED WITH HEPA FILTERS AND TWO (2) DISPOSABLE TYVEK SUIT[S] (BOOTS AND HOODS).

2 - POLY SHALL BE PLACED SUCH THAT ANY DEMOLITION DEBRIS WILL FALL ON TO THE PROTECTED FLOORING.

3 - CEILING PENETRATIONS SHALL BE MADE ONLY IN AREAS WHERE ~~FIRE SAFETY~~ **SPRINKLER SYSTEM** EQUIPMENT WILL BE INSTALLED.

4 - THE FIRST PENETRATION SHALL BE CUT IN 2' X 2' SECTIONS OR A SIZE ADEQUATE FOR A VISUAL SURVEY BY THE ON-SITE V.P.I.H.

5 - THE PROJECT MANAGER SHALL THEN DETERMINE WHETHER THE GENERAL CONTRACTOR TEAM MAY CONTINUE DEMOLITION IN THE

AREA UNDER NON-ASBESTOS CONDITIONS OR
IF ABATEMENT CONTRACTORS WILL PERFORM
CLEANUP/DECONTAMINATION PROCEDURES C.

6 - FOR (EX) CEILING & CARPET FINISHES SEE
ARCHITECTURAL DRAWINGS.

[Strikethrough material deleted and bold material
added by Contract Solicitation Amendment No. 3]

All plaster ceilings which were to remain were to be penetrated with a 2' x 2' opening to permit access for the installation of the sprinkler system and to abate the fittings. (Tr. 40) In addition, plaster ceilings in a series of rooms, principally located on the 9th floor, were to be completely demolished as part of a remodeling project. Abatement of plaster ceilings was contemplated, according to VA officials, because they assumed that some of the old asbestos covering on pipes above the ceilings had deteriorated and fallen on the ceiling below it. (Tr. 65) Because the VA did not know exactly where this debris might be found, they made no representations as to which plaster ceilings were contaminated. (Tr. 85)

Specification Section 01569, ASBESTOS ABATEMENT, further provided that the quantities and location of ACM indicated on the drawings were "only best estimates which are limited by the physical constraints imposed by the occupancy of the building." (Paragraph 1.2) Significant variations would result in contract price adjustments pursuant to the "Differing Site Conditions (FAR 52.236-2) of Section 01001, General Conditions."

In this connection, Solicitation Amendment Number Three, issued on July 10, 1991, required, in addition to the base bid, that offerors submit "**Asbestos Abatement Unit Prices**" to be used in pricing any subsequent contract adjustments. Additive and deductive unit prices were required for removing asbestos insulated pipe fittings above various types of ceilings in rooms of differing dimensions under either major or minor modified abatement procedures. Similar additive and deductive prices were also required for removal of asbestos above plaster ceilings. These unit prices were to "become part of the contract."

Beckman was one of seven contractors whose bid was opened on July 23, 1991. The Contractor bid \$3,940,000 for Bid Item I and \$282,000 for the Asbestos Abatement required by Bid Item II. An additional \$1,214,000 was bid for the five optional items and included \$100,000 for associated asbestos abatement work. (R4, tab 1) In a "Determination and Findings" memorandum dated July 26, 1991, Contracting Officer (CO) John Hornak found that Beckman was the "apparent low bidder" based on a totaling of all of the options together with the basic bid requirements, Items I and II. CO Hornak noted that:

Beckman's total bid is 7.7% below the second low bidder.
On bid item No. I he is 26% above the second low bidder
which represents roughly 53% of the second low bidder's
total and 72% of Beckman's total. On bid Item II (Asbestos

Abatement Work) and Options, Beckman is 36% below the second low bidder's and 47% below the second low bidder on the Options. The net result ends up with Beckman having a bid 7.7% below the second low bidder.

(4548 R4, tab 5)

Hornak's memorandum also recorded that Beckman's president had been contacted and that a letter had been received from him indicating that the bid had been examined and no "significant errors" had been found. Hornak wrote that Beckman informed him that they "specifically looked at the asbestos removal and options costs and found them to be correct." Hornak thus decided to proceed with the contract award, finding that Beckman's bid was "accurate" and "reasonable even though the bid prices for the asbestos work and the Options are substantially lower than the other bidders."

The record is silent as to how Beckman arrived at the cost of the asbestos abatement work which it submitted to the VA. An official of Brennan's PEB & Associates (Brennan or Asbestos Subcontractor), the firm that eventually did the asbestos abatement work, testified that Beckman had initially hired another asbestos subcontractor but that the subcontractor "left the project" and Brennan had been "asked to come in and take over the project . . . prior to any actual work being done." (Tr. 99) The record does reflect that on July 31, 1991, Patrick Brennan, president of the Asbestos Subcontractor, faxed a letter to Beckman stating that his firm had previously submitted price quotations to other bidders on the project and that Brennan had not been aware that Beckman was also bidding on the project. (Exh. G-5)

Brennan asked for the opportunity to submit its proposal and offered:

[to complete] the above referenced asbestos abatement project according to the plans and specifications outlined below:

Base Bid (*including isolated ceiling cleaning of 20% of plaster ceilings to be penetrated for sprinkler installation*) Two hundred Ninety Two thousand (\$292,000)

Option 1A--6th floor patient privacy rooms--Eight Thousand Nine hundred (\$8,900)

Option 2A--9th floor quarters--Seven thousand Three hundred Fifty (\$7,350)

Option 5A--4th & 5th floor Patient Privacy Rooms--Twelve thousand Three hundred Fifty (\$12,350)

Unit prices are contained on unit price checklist

(Exh. G-5) (emphasis added)

Unit prices required by the solicitation were attached to Brennan's letter and included the following three items concerning asbestos and plaster ceilings:

<i>Item No.</i>	<i>Description</i>	<i>Add to Contract</i>	<i>Deduct from Contract</i>
3.0	Remove asbestos above plaster ceiling using procedures outline in Paragraph No. 3.2.5 Major/Modified Asbestos Removal.		
	For 150 Sq. Ft. Room/Area Size	\$3900	\$3600
	For 300 Sq. Ft. Room/Area Size	\$7250	\$6300
	* * *	*	
8.0	Remove asbestos above plaster ceiling using procedures outlined in Paragraph No. 3.2.6 Minor/Modified Asbestos Removal		
	For 150 Sq. Ft. Room/Area Size	\$2500	\$2200
	For 300 Sq. Ft. Room/Area Size	\$4200	\$3800
	* * *	*	
11.0	Work described in paragraph No. 2 (and as changed by this Amendment No. 3) under heading <i>AREAS WHERE ASBESTOS DEBRIS IS ENCOUNTERED DURING DEMOLITION OF PLASTER CEILINGS</i>		
	For 150 Sq. Ft. Room/Area Size	\$2400	\$2300
	For 300 Sq. Ft. Room/Area Size	\$3800	\$3300

The Government formally awarded the contract to Beckman on September 10, 1991, in the amount of \$5,436,000 and issued a Notice to Proceed on October 2, 1991. (R4, tabs 2, 3) On November 14, 1991, Beckman entered into a subcontract with Brennan for the asbestos abatement work for \$320,